

HOUSE BILL REPORT

SSB 5722

As Passed House - Amended:

March 3, 2022

Title: An act relating to reducing greenhouse gas emissions in buildings.

Brief Description: Reducing greenhouse gas emissions in buildings.

Sponsors: Senate Committee on Environment, Energy & Technology (originally sponsored by Senators Nguyen, Lias, Lovelett, Nobles, Pedersen, Saldaña and Stanford; by request of Office of the Governor).

Brief History:

Committee Activity:

Environment & Energy: 2/17/22, 2/22/22 [DP];

Appropriations: 2/25/22, 2/28/22 [DPA].

Floor Activity:

Passed House: 3/3/22, 53-45.

Brief Summary of Substitute Bill (As Amended by House)

- Requires the Department of Commerce (Commerce) to adopt energy management and benchmarking requirements by rule for certain commercial buildings more than 20,000 but not more than 50,000 square feet and multifamily residential buildings more than 20,000 square feet (Tier 2 covered buildings) by December 1, 2023, and requires building owners to report compliance with these requirements beginning July 1, 2027.
- Authorizes Commerce to determine Tier 2 covered building eligibility for incentive payments based on a building owner's adoption of energy management and benchmarking requirements, and requires certain utilities to then provide these incentive payments if the utility may receive a related tax credit, for up to \$150 million in total.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

- Requires Commerce to evaluate benchmarking data from Tier 2 covered buildings to determine energy use and greenhouse gas emissions averages by building type by July 1, 2029.
- Requires Commerce to adopt rules for performance standards for Tier 2 covered buildings by December 31, 2030.

HOUSE COMMITTEE ON ENVIRONMENT & ENERGY

Majority Report: Do pass. Signed by 8 members: Representatives Fitzgibbon, Chair; Duerr, Vice Chair; Berry, Fey, Harris-Talley, Ramel, Shewmake and Slatter.

Minority Report: Do not pass. Signed by 5 members: Representatives Dye, Ranking Minority Member; Klicker, Assistant Ranking Minority Member; Abbarno, Boehnke and Goehner.

Staff: Megan McPhaden (786-7114).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass as amended. Signed by 19 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Chopp, Cody, Dolan, Fitzgibbon, Frame, Hansen, Johnson, J., Lekanoff, Pollet, Ryu, Senn, Springer, Stonier, Sullivan and Tharinger.

Minority Report: Do not pass. Signed by 14 members: Representatives Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke, Caldier, Chandler, Dye, Harris, Hoff, Jacobsen, Rude, Schmick and Steele.

Staff: Jessica Van Horne (786-7288).

Background:

State Energy Code.

The State Energy Code (Energy Code) is part of the State Building Code, which sets the minimum construction requirements for buildings in the state. The Energy Code provides a maximum and minimum level of energy efficiency for residential buildings and the minimum level of energy efficiency for nonresidential buildings.

The State Building Code Council (Council) maintains the Energy Code. The Council reviews, updates, and adopts model state building codes every three years. The Council must adopt codes that require buildings constructed from 2013 through 2031 to move

incrementally toward a 70 percent reduction in energy use by 2031.

The Department of Commerce (Commerce) must develop and implement a strategic plan to enhance energy efficiency in and reduce greenhouse gas (GHG) emissions from homes, buildings, districts, and neighborhoods. This strategic plan must be used to help direct future Energy Code changes.

Energy Performance Standard.

Commerce must establish by rule state energy performance standards (performance standards) for covered commercial buildings. Covered commercial buildings include those where the sum of nonresidential, hotel, motel, and dormitory floor areas exceeds 50,000 gross square feet, excluding the parking garage area.

The performance standards seek to maximize reductions in GHG emissions from the building sector. The performance standards include energy use intensity targets by building type and methods of conditional compliance that include an energy management plan, operations and maintenance program, energy efficiency audits, and investments in energy efficiency measures designed to meet the targets.

Commerce may impose an administrative penalty on a building owner for failing to submit documentation demonstrating compliance with the requirements of the performance standards. The penalty may not exceed \$5,000 plus an amount based on the duration of any continuing violation. The additional amount for a continuing violation may not exceed a daily amount equal to \$1 per year per gross square foot of floor area. Commerce may adjust the maximum penalty rates for inflation through rule-making.

Early Adoption Incentive Program.

The performance standards include an early adoption incentive program for covered building owners who comply with the performance standards before the required date. Covered building owners may receive a base incentive payment of 85 cents per gross square foot of floor area, excluding parking, unconditioned, or semiconditioned spaces. Commerce may not approve incentive payments that exceed a total of \$75 million.

Building owners must provide documentation to Commerce demonstrating that they qualify for an incentive. Once Commerce receives this documentation, Commerce must authorize certain utilities—consumer-owned or investor-owned gas or electric utilities that serve more than 25,000 customers in Washington—to make the incentive payment to the building owner. These qualified utilities must administer the incentive payment, provided they are allowed a tax credit in an amount equal to the incentive payment plus documented administrative costs not more than 8 percent of the incentive payment. Other utilities may voluntarily participate in the early adoption incentive program.

Building owners of the following types of buildings may be eligible for this incentive:

- covered commercial buildings; and

- multifamily residential buildings where the floor area exceeds 50,000 gross square feet, excluding the parking garage area.

Summary of Amended Bill:

Energy Management and Benchmarking Requirements.

Requirements for Tier 2 Covered Buildings Established by Rule.

By December 1, 2023, the Department of Commerce (Commerce) must adopt by rule state energy management and benchmarking requirements for Tier 2 covered buildings. Tier 2 covered buildings are: (1) nonresidential, hotel, motel, and dormitory buildings with more than 20,000 square feet but not more than 50,000 square feet, excluding the parking garage area; and (2) multifamily buildings that are more than 20,000 square feet. A small business economic impact statement must be included as part of this rule making process.

Commerce's requirements for Tier 2 covered buildings must be consistent with the state energy performance standards (performance standards) for buildings that are redefined as Tier 1 buildings, and must be limited to energy planning and energy use analysis through benchmarking, reporting, and administrative procedures. Tier 1 buildings are buildings where the sum of nonresidential, hotel, motel, and dormitory floor areas are equal to or exceed 50,000 gross square feet, excluding the parking garage area. Commerce's adopted administrative procedure requirements must include exemptions for financial hardship and an appeals process for administrative determinations, including penalties imposed by Commerce.

Customer Support Program.

Commerce must provide a customer support program to building owners that includes outreach, informational materials, and technical assistance with benchmarking, and must prioritize under-resourced buildings with a high energy use per square foot, buildings in rural communities, buildings whose tenants are primarily small businesses, and buildings located in high-risk communities according to the department of health's environmental disparities map.

Reporting.

By July 1, 2025, Commerce must notify Tier 2 covered building owners of Commerce's adopted requirements. Tier 2 covered building owners must submit reports with their compliance plans to Commerce by July 1, 2027, and every five years thereafter. Reports are limited to include energy management plans, operations and maintenance plans, and energy use analysis through benchmarking.

Incentive Payments.

New Incentive Program for Tier 2 Covered Buildings.

Commerce must establish an incentive program to supplement the cost to the building owner or tenant to implement the benchmarking requirements for Tier 2 covered buildings.

Beginning July 1, 2025, Tier 2 covered building owners may submit an application for an

incentive payment. Tier 2 eligible building owners who submit an application to Commerce and who comply with benchmarking, energy management, and operations and maintenance planning requirements may receive an incentive payment under the state's early adoption incentive program for the performance standards. The base incentive payment is 30 cents per gross square foot of floor area, excluding parking, unconditioned, or semiconditioned spaces. Commerce may implement a tiered incentive structure for upgrading multifamily buildings for multifamily building owners willing to commit to antidisplacement provisions.

Owners of multifamily residential buildings that are larger than 50,000 gross square feet, excluding the parking garage area, thus now may be eligible for both the new 30 cent benchmarking incentive payment and the existing 85 cent performance standard incentive payment.

Utility Administration and Tax Credit.

Commerce may authorize any participating utility, regardless of fuel-specific savings, serving a Tier 2 covered building to administer the incentive payment. If Commerce authorizes a participating utility to administer the incentive payment, the utility must administer the incentive payment for Tier 2 covered buildings in the same manner as utilities are required to administer incentive payments for Tier 1 covered buildings.

Commerce may not certify Tier 2 covered building owners for an incentive payment if the payment is likely to result in total incentive payments more than \$150 million.

Administrative Penalties.

Commerce may adopt rules to impose administrative penalties, not to exceed 30 cents per square foot, to Tier 2 covered building owners who do not submit documentation demonstrating compliance with energy management and benchmarking requirements. Funds collected from the penalties must be deposited into the Low-Income Weatherization and Structural Rehabilitation Assistance Account. Expenditures made with these funds must be reinvested into the program to support compliance with the performance standards.

Energy Performance Standards.

Evaluation and Report.

By July 1, 2029, Commerce must evaluate benchmarking data to determine energy use and GHG emissions averages by Tier 2 covered building type. Commerce must submit a report to the Legislature and the Governor by October 1, 2029, outlining recommendations for cost-effective building performance standards for Tier 2 covered buildings, the estimated costs for building owners to implement the performance standards, and anticipated implementation challenges.

Adoption by Rule.

By December 31, 2030, Commerce must adopt rules to include Tier 2 covered buildings in the state's performance standards. Commerce must consider the age of buildings in setting energy use intensity targets for Tier 2 covered buildings, and Commerce may adopt

performance standards for multifamily residential buildings on a longer timeline than other Tier 2 covered buildings. Commerce must include a small business economic impact statement as part of this rule making. The rules may not take effect before the conclusion of the 2031 legislative session.

Incorporation of Off-site Renewable Energy.

The energy use intensity targets under the performance standards for Tier 1 and Tier 2 covered buildings may now incorporate renewable energy produced on a campus that is not attached to the building.

Subject to available funding.

This bill is null and void unless funded in the budget.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed. However, the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony (Environment & Energy):

(In support) Washington cannot meet its statutory greenhouse gas (GHG) emissions limits without meaningfully reducing emissions within the building sector. Increasing energy efficiency is the cheapest and fastest way to reduce GHG emissions from buildings, and this bill will maximize energy efficiency in buildings across our state. The goal of this bill is to lower emissions from buildings in a way that is incentive-based. It will improve the performance of older, existing structures. It will result in lower utility costs for low-income residents in the long run. Economic incentives, standards, and regulations are necessary because market forces can no longer move change fast enough. The bill offers an adequate timeframe to bring buildings into compliance, focuses on low cost/no cost actions that building owners can take to reduce utility costs and save money, and provides technical and financial assistance to building owners and managers. Examples of the operations and maintenance work include changing filters, adjusting thermostats, and ensuring lighting is used optimally. The incentive program would help assist with the cost of compliance to building owners, would be used in addition to available utility incentive funds, and it incentivizes building owners to protect tenants from displacement. The bill gives priority to building owners who may need more assistance meeting the requirements, which is critical. The appeals process under the 2019 Clean Buildings Act was frustrating for some, and this bill includes language to ensure that anyone working to comply with these standards would have a strong process to appeal if necessary. This bill aligns with the 2021 State Energy Strategy recommendations for the building sector. Buildings account for 27 percent of GHG emissions in the state, and in at least one city they account for more than half of the city's GHG emissions. There is a lot of interest in this issue from cities because cities need

to cut their GHG emissions due to commitments they've made.

(Opposed) None.

(Other) There was a lot of collaboration during this bill's development to respond to concerns that have been resolved. The bill is now a better proposal. This brings many more buildings into the program which makes it much more complicated than the buildings bill from 2019. The Legislature should take an active role in the implementation of this legislation. The building industry was hit hard by COVID-19 and this is not a good time to add new requirements to building owners. The program will include 50,000 additional buildings in the state. Building owners of small and medium-sized buildings will see some higher costs.

Staff Summary of Public Testimony (Appropriations):

(In support) None.

(Opposed) None.

Persons Testifying (Environment & Energy): (In support) Senator Joe Nguyen, prime sponsor; Anna Lising, Office of the Governor; Emily Salzberg, Department of Commerce; Jon Grant, Low Income Housing Institute; Christopher Patano, EHDD and American Institute of Architects Washington Council; Martin Gibbins, League of Women Voters of Washington; and R. Court Olson, People for Climate Action.

(Other) Greg Hanon, National Association for Industrial and Office Parks; and Peter Godlewski, Association of Washington Business.

Persons Testifying (Appropriations): None.

Persons Signed In To Testify But Not Testifying (Environment & Energy): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.